

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

T.S., a minor,  
and GINA SHARBOWSKI,

Plaintiffs,

Case No. 14-10216

v.

Paul D. Borman  
United States District Judge

UTICA COMMUNITY SCHOOLS,  
MICHIGAN DEPARTMENT OF  
EDUCATION, and JANE AND JOHN  
DOES,

Defendants.

---

ORDER REGARDING PLAINTIFFS' REQUEST FOR PRIVATE PLACEMENT OF T.S.

On July 24, 2014, the Court assigned counsel, James E. Stewart of the Honigman, Miller firm, to represent Plaintiffs in this action. (ECF No. 23, Order of Assignment of Counsel.) The Court then directed the parties to participate in facilitation, under the guidance of Dr. Carla Harting, in an effort to resolve certain issues regarding the current educational placement of T.S. The parties met with Dr. Harting on two separate occasions and subsequently, at a status conference held before this Court on October 31, 2014, announced to the Court that they had reached a tentative agreement regarding the proper placement for T.S. for the current school year. However, Plaintiffs were unwilling to agree to dismiss the claims in this action based upon that agreement because they believe that Utica Community Schools should be ordered to bear the cost of a private educational placement for T.S. as compensation for the past wrongs committed by prior administrations that were acknowledged in a July 23, 2012 opinion favorable to T.S. issued by Administrative Law

Judge Susanne Harris. Notably, while ALJ Harris did conclude that Utica Schools had denied T.S. a “free appropriate public education” (“FAPE”), citing numerous failings on the part of Utica Schools with regard to the “individualized education program” (“IEP”) for T.S., and ordered Utica Schools to adopt numerous remedial measures, she did not order private placement of T.S. at that time. Plaintiffs did not appeal ALJ Harris’s July 23, 2012 opinion.

Plaintiffs currently have a second and separate due process complaint, filed on July 23, 2014, pending before Administrative Law Judge Christopher Saunders of the Michigan Administrative Hearing System. This Court has not been informed of the specifics of that due process complaint but ALJ Saunders agreed to adjourn the originally scheduled hearing on that complaint to allow the facilitation ordered by this Court to proceed. The Court is informed that a hearing on that due process complaint is now scheduled for January 8 and 9, 2015, before ALJ Saunders.

At the October 31, 2014 status conference before this Court, in an effort to more fully understand Ms. Sharbowski’s reluctance to agree to dismiss her claims against Defendants in this action without an order of private placement for T.S., the Court instructed the parties to brief the issue of Plaintiffs’ entitlement to an order of private placement for T.S. that would be issued by this Court at this time in this action. Having reviewed the parties’ submissions, it is clear to the Court that, with regard to the claims that are the subject of the due process complaint currently pending before ALJ Saunders, this Court is without jurisdiction to issue such an order as to claims that are pending in the administrative process. *See Crocker v. Tennessee Secondary School Athletic Ass’n*, 873 F.2d 933, 935 (6th Cir. 1989) (noting that the Individuals With Disabilities Education Act (“IDEA”) requires exhaustion of administrative remedies by parents and students before appeal can be made to federal court, noting that “[w]ere federal courts to set themselves up as the initial arbiters

of handicapped children's educational needs before the administrative process is used, they would endanger not only the procedural but also the substantive purpose of the Act"). Accordingly, the parties may proceed to the hearing on Plaintiffs' July 23, 2014 due process complaint as scheduled before ALJ Saunders on **January 8 and 9, 2015**.

Additionally, because appointed counsel has not had an opportunity to respond to the pending motions to dismiss filed in this action (ECF Nos. 10, 15), the Court will permit Plaintiffs' appointed counsel to file updated responses to those motions on or before **February 2, 2015**. Defendants will be permitted to file additional replies on or before **February 16, 2015**. A hearing on the motions will be scheduled for **Wednesday, March 25, 2015 at 3:30 p.m.**

IT IS SO ORDERED.

s/Paul D. Borman  
PAUL D. BORMAN  
UNITED STATES DISTRICT JUDGE

Dated: January 5, 2015

#### CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on January 5, 2015.

s/Deborah Tofil  
Case Manager